

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

OAH No. 2011091083

KARILIN H.,

Claimant,

vs.

EASTERN LOS ANGELES REGIONAL
CENTER,

Service Agency.

DECISION

This matter was heard by Julie Cabos-Owen, Administrative Law Judge with the Office of Administrative Hearings, on November 10, 2011, in Whittier, California. Karilin H. (claimant) was represented by her mother, Alba M., who is her authorized representative.¹ Eastern Los Angeles Regional Center (ELARC or Service Agency) was represented by Antonio Flores.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on November 10, 2011.

ISSUE

The parties agreed that the issue to be decided is as follows:

Is the Service Agency required to continue providing funding for the purchase of claimant's specialized shoes?

¹ Claimant's and her mother's last names are omitted throughout this Decision to protect their privacy.

FACTUAL FINDINGS

1. Claimant is an adult female client of the Service Agency who is eligible for regional center services based on diagnoses of Mental Retardation, Autism and Epilepsy. (Claimant Exhibits 17 and 32.)

3. The Service Agency had been providing funding once per year for claimant to purchase specialized shoes and custom-fitted insoles with a lift in the left shoe. (Service Agency Exhibits 1 and 2; Claimant Exhibits 4, 5, 6, and 7.)

4. Claimant's Individualized Program Plans (IPPs) do not indicate for which qualifying disability the funding for specialized shoes and insoles had been authorized. (Claimant's Exhibits 17, 20, and 22.)

5. On September 2, 2011, following a physician review of claimant's medical records, the reviewing physician determined that the funding for claimant's specialized shoes and insoles was "not related to [any] developmental disability." (Service Agency Exhibit 2.)

6. In a Notice of Proposed Action dated September 16, 2011, the Service Agency notified claimant that it proposed denial of funding for her specialized shoes. (Service Agency Exhibit 5.)

7. Claimant's mother submitted a Fair Hearing Request on September 23, 2011. (Claimant's Exhibit 3.)

8(a). In addition to her qualifying diagnoses, claimant's medical records contain indications that she had been diagnosed with, among other things: Cerebral Palsy; quadriplegia; and lower extremity misalignment. (Service Agency Exhibit 1; Claimant's Exhibits 10, 11, 12, and 17.)

8(b). Claimant's medical records did not contain any report or other documentation specifying that a physician had diagnosed claimant with cerebral palsy following a physical examination. Rather, most indications in her medical records that she was diagnosed with cerebral palsy were previously-formatted notations by physical therapists and occupational therapists with the Los Angeles County Department of Health Services (DHS) in assessment reports. These DHS documents also contained the erroneous diagnosis of quadriplegia. (Claimant's Exhibits 8, 10, 11 and 12.)

8(c). Claimant's medical records contained a November 17, 2009 notation on a prescription pad by claimant's primary care physician, Bina A. Kamdar, M.D., stating that claimant "has cerebral palsy and muscle stiffness and required aquatic therapy to help relax her. . . ." The notation did not indicate whether Dr. Kamdar had personally diagnosed claimant with cerebral palsy, or whether this diagnosis was

noted through review of claimant's other medical records, some of which were erroneous. (Claimant's Exhibit 8.)

8(d). Consequently, the evidence did not establish that a physician had diagnosed claimant with Cerebral Palsy.

9(a). Claimant's medical records contained a July 15, 2009 notation on a prescription pad by Dr. Kamdar, stating that claimant "has left leg shorter than right and needs special shoes with lift so her gait can be straightened." (Claimant's Exhibit 8.)

9(b). The evidence did not establish that claimant's leg length discrepancy was related to cerebral palsy. Furthermore, in the November 17, 2009 prescription pad notation, Dr. Kamdar prescribed "aquatic therapy," but not special shoes, for claimant's "cerebral palsy and muscle stiffness." Consequently, the evidence did not establish that claimant's special shoes are necessary to treat cerebral palsy.

10. The evidence did not establish that claimant's special shoes are necessary to meet any needs related to her Mental Retardation, Autism or Epilepsy.

11. The evidence did not establish that claimant's special shoes were necessary to treat any qualifying developmental disability under the Lanterman Act.

LEGAL CONCLUSIONS

1. Claimant's appeal of the Service Agency's termination of funding for special shoes is denied. (Factual Findings 1 through 11; Legal Conclusions 2 through 5.)

2. In attempting to discontinue a service, ELARC bears the burden of proving by a preponderance of the evidence that the service was not necessary to meet the goals stated in a consumer's IPP. ELARC has met this burden.

3(a). Welfare and Institutions Code section 4512, subdivision (b) provides, in part:

[T]he determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each

option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option.

3(b). Welfare and Institutions Code section 4646 provides, in part:

(a) It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

3(c). Welfare and Institutions Code section 4646.5 provides, in part:

(a) The planning process for the individual program plan described in Section 4646 shall include all of the following:

[¶] . . . [¶]

(2) A statement of goals, based on the needs, preferences, and life choices of the individual with developmental disabilities, and a statement of specific, time-limited objectives for implementing the person's goals and addressing his or her needs. These objectives shall be stated in terms that allow measurement of progress or monitoring of service delivery. These goals and objectives should maximize opportunities for the consumer to develop relationships, be part of community life in the areas of community participation, housing, work, school, and leisure, increase control over his or her life, acquire increasingly positive roles in community life, and develop competencies to help accomplish these goals .

[¶] . . . [¶]

(4) A schedule of the type and amount of services and supports to be purchased by the regional center or obtained from generic agencies or other resources in order to achieve the individual program plan goals and objectives, and identification of the provider or providers of service responsible for attaining each

objective, including, but not limited to, vendors, contracted providers, generic service agencies, and natural supports. The plan shall specify the approximate scheduled start date for services and supports and shall contain timelines for actions necessary to begin services and supports, including generic services.

3(d). Welfare and Institutions Code section 4648, subdivision (a)(1), provides:

In order to achieve the stated objectives of a consumer's individual program plan, the regional center shall conduct activities including, but not limited to, all of the following:

(a) Securing needed services and supports.

(1) It is the intent of the Legislature that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices. The regional center shall secure services and supports that meet the needs of the consumer, as determined in the consumer's individual program plan, and within the context of the individual program plan, the planning team shall give highest preference to those services and supports which would allow minors with developmental disabilities to live with their families, adult persons with developmental disabilities to live as independently as possible in the community, and that allow all consumers to interact with persons without disabilities in positive, meaningful ways.

[(b)] . . . [(b)]

(7) No service or support . . . shall be continued unless the consumer or, where appropriate, his or her parents . . . is satisfied and the regional center and the consumer or, when appropriate, the person's parents . . . agree that planned services and supports have been provided, and reasonable progress toward objectives have been made.” (Emphasis added.)

3(e). Pursuant to the Lanterman Act, services provided a consumer must be effective in meeting the consumer's IPP goals and those goals must be based on the consumer's needs and preferences. It is clear that the Lanterman Act intended that funded services relate to the consumer's needs which arise due to his/her qualifying developmental disability(ies), as defined by the Lanterman Act. A consumer may have a diagnosis that makes her eligible for Lanterman Act services, as well as a

diagnosis unrelated to the Lanterman Act. Under these circumstances, the Lanterman Act would apply only to the services related to the eligible condition. To require regional centers to provide services to treat ineligible disabilities would call for an illogical interpretation of the Lanterman Act.

4(a). The Service Agency has proven, by a preponderance of the evidence, that claimant's specialized shoes were not necessary for the purpose of meeting the goals stated in claimant's IPP pertaining to her qualifying disabilities.

4(b). The fact that ELARC funded the purchase of the specialized shoes in the past does not bar ELARC from re-examining the need for this, or any other, service as part of its annual review of claimant's IPP.

5. Given the foregoing, the Service Agency's proposed denial of continued funding for claimant's specialized shoes was appropriate.

ORDER

Eastern Los Angeles Regional Center's denial of continued funding for the purchase of claimant's specialized shoes is upheld. Claimant's appeal is denied.

DATED: December 2, 2011

JULIE CABOS-OWEN
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.